

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

GERALD LYNN WILLIAMS,

Plaintiff,

v.

CIVIL ACTION NO. 1:06-0641

THE CITY OF BLUEFIELD, et al.,

Defendants.

and

AUSTIN ROBERT MARSHALL,

Plaintiff,

v.

CIVIL ACTION NO. 1:06-0847

THE CITY OF BLUEFIELD, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the court is plaintiffs' motion to substitute Mardella Thomason, Administratrix of the estate of defendant John A. Jones, for Mr. Jones. (Doc. No. 362.) In support of their motion, plaintiffs state that defendants served an Amended Suggestion of Death of Mr. Jones on March 18, 2009 (Doc. No. 299), and that counsel for Mr. Jones has agreed to accept service of plaintiffs' motion on behalf of Mardella Thomason. (Doc. No. 362 at 1-2.) No response has been made to the motion.

Federal Rule of Civil Procedure 25(a) permits a district court, upon the death of a party, to order the substitution of

the proper party if the claim at issue is not extinguished by the original party's death, and if the motion is made within ninety days after service of a statement noting the party's death. Fed. R. Civ. P. 25(a). Because the claims against Mr. Jones survive against his personal representative pursuant to West Virginia Code § 55-7-8a, the court **GRANTS** plaintiffs' motion. See Roberts v. Rowe, 89 F.R.D. 398 (S.D. W. Va. 1981) (Kidd, J.) (applying West Virginia survival statute and holding that a 42 U.S.C. § 1983 action alleging personal injury not resulting in death survives the subsequent death of the victim). Accordingly, Mardella Thomason, Administratrix of the estate of defendant John A. Jones, is hereby **ORDERED** substituted as a party defendant in place of the late Mr. Jones.

The Clerk is directed to send copies of this Memorandum Opinion and Order to all counsel of record.

It is **SO ORDERED** this 14th day of May, 2009.

ENTER:

A handwritten signature in dark ink, appearing to read "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge